she now was like a certain gentleman who was offended at being told he was a good fiddler. He threw away his fiddle and was good for nothing since.

A.E.

REVIEW OF NEW PUBLICATIONS.

Observations on the Criminal Law of England, as it relates to capital Punishments, and the mode in which it is administered. By Sir Samuel Romilly. London printed by J. M'Creery for Cadell and Davis 1810; *price 2s. 6d. English, 76 p.p.*

A DISPOSITION is generally prevalent among a certain class of people, to cry up our constitution and our laws, as being altogether excellent without any mixture of alloy, and to brand every attempt to introduce improvements either into the one or the other with the unpopular name of innovation, as if our ancestors had monopolized all wisdom, and left nothing to their successors, but "to wonder with a foolish face of praise," and in answer to all objections to reply in the silly language of chivalry, that our Dulcinea is fairer than all others, who have been, or ever shall be hereafter. By such assertions we at once gratify our vanity and manifest our want of deep reflection; perpetuate abuses, and the real advantages derived from the accumulated wisdom of preceding ages joined to our own, are completely lost. Too many—

> .....would scorn the boy should teach them skill,
> And having once been wrong, will be so still."

A greater evil scarcely exists than this foolish dread of innovation, and into its service are enlisted some of the worst passions, which infest the human breast. In the absence of all sound argument, and in defiance of reason, because reason is against it, the advocates of ancient errors use calumny and malice as their frequent auxiliaries, and being unable to answer, they are ready to asperse, and attribute unworthy motives on suspicion, against innovators and reformers.

On many subjects reform stirs up a nest of hornets, in those who fatten on corruption, but the alteration of our criminal law has but little of this stimulus to force into action, and some might expect that the question would be left to be tried coolly and impartially on its own merits. But not so: the force of habit is powerful, and without discrimination: and the bigotted answer of the ancient British Barons "*Nolumus leges Angliæ mutari,*" is still renewed, without taking pains to examine, how far laws made in a different state of civilization, are capable of improvement in a period of increased, and advancing knowledge.

Our criminal code is severe in the letter, in the extreme, but increasing knowledge, with more just and humane sentiments opposes the harshness of the written law, and is sometimes even in danger of leading to the opposite extreme of letting the guilty altogether escape, to their own injury, and to the injury of the community, rather than let them be punished too severely. Sir Samuel Romilly is engaged in the laudable attempt to try to prevail on the legislature to apportion more accurately punishment to crime. He remarks:

"The following observations contain the substance of a speech delivered in the house of commons on the 9th February 1810, on moving for leave to bring in bills, to repeal the acts of 10 and 11 Will. III. 12 Ann, and 24 Geo. II. which make the crimes of stealing privately in a shop, goods of the value of five shillings; or in a dwelling house, or on board a vessel in a navigable river, property of the value of forty shillings, capital felonies. Some arguments are added, which on that occasion were suppressed, that the patience of the house might not be put to too severe a trial.

"There is probably no other country

in the world in which so many and so great a variety of human actions are punishable with loss of life as in England. These sanguinary statutes, however, are not carried into execution. For some time past the sentence of death has not been executed on more than a sixth part of all the persons on whom it has been pronounced, even taking into the calculation crimes the most atrocious and the most dangerous to society, murders, rapes, burning of houses, coining, forgeries, and attempts to commit murder. If we exclude the e from our consideration, we shall find that the proportion which the number executed bears to those convicted is, perhaps as one to twenty: and if we proceed still further, and laying out of the account burglaries, highway robberies, horse-stealing, sheep-stealing, and returning from transportation, confine our observations to those larcencies, unaccompanied with any circumstance of aggravation, for which a capital punishment is appointed by law, such as stealing privately in shops, and stealing in dwelling-houses and on board ships, property of the value mentioned in the statutes, we shall find the proportion of those executed reduced very far indeed below that even of one to twenty.

"This mode of administering justice is supposed by some persons to be a regular, matured, and well-digested system. They imagine, that the state of things which we see existing is exactly that which was originally intended; that laws have been enacted which were never meant to be regularly enforced, but were to stand as objects of terror in our statute book, and to be called into action only occasionally, and under extraordinary circumstances, at the discretion of the judges. Such being supposed to be our criminal system, it is not surprizing that there should have been found ingenious men to defend, and to applaud it. Nothing, however, can be more erroneous than this notion. Whether the practice which now prevails be right or wrong, whether beneficial or injurious to the community, it is certain that it is the effect not of design, but of that change which has slowly taken place in the manners and character of the nation, which are now so repugnant to the spirit of these laws, that it has become impossible to carry them into execution.

"It appears that at the commencement of the present reign, the number of convicts executed, exceeded the number of those who were pardoned; but that at the present time, the number pardoned very far exceeds the number of those who are executed. This lenity I am very far from censuring; on the contrary, I applaud the wisdom as well as the humanity of it. If the law were unremittingly executed, the evil would be still greater, and many more offenders would escape with full impunity: much fewer persons would be found to prosecute, witnesses would more frequently withhold the truth which they are sworn to speak, and juries would oftener, in violation of their oaths, acquit those who are manifestly guilty. But a stronger proof can hardly be required than this comparison affords, that the present method of administering the law is not, as has been by some imagined, a system maturely formed, and regularly established, but that it is a practice which has gradually prevailed, as the laws have become less adapted to the state of society in which we live.

"There is no instance in which this alteration in the mode of administering the law has been more remarkable, than in those of privately stealing in a shop, or stable, goods of the value of five shillings, which is made punishable with death, by the statute of 10 and 11 William III. and of stealing in a dwelling house, property of the value of forty shillings, for which the same punishment is appointed by the statute of 12 Ann, and which statutes it is now proposed to repeal.

"What has been the number of persons convicted of those offences within the last seven years does not appear; but from the tables published under the authority of the Secretary of State, we find that within that period there were committed to New-

gate for trial, charged with the crime of stealing in dwelling-houses, 599 men, and 414 women; and charged with the crime of shop-lifting, 506 men, and 353 women; in all 1,872 persons, and of these only one was executed.

"In how many instances such crimes have been committed, and the persons robbed have not proceeded so far against the offenders as even to have them committed to prison: how many of the 1,872 thus committed were discharged, because those who had suffered by their crimes would not appear to give evidence upon their trial: in how many cases the witnesses who did appear withheld the evidence that they could have given: and how numerous were the instances in which juries found a compassionate verdict, in direct contradiction to the plain facts clearly established before them, we do not know; but that these evils must all have existed to a considerable degree, no man can doubt."

He also points out the dangers attending the present state of uncertainty, in the execution of the law, and shows the difficulties in which judges, jurors, prosecutors, and witnesses are involved, by reason of the extreme severity of the statute law, and which is productive of innumerable errors in the manner in which they respectively discharge their separate functions. If the law only affixed due, and nicely adjusted punishments to crimes; if legislators were as careful to frame equitable laws, as well calculated for the prevention, and moderate but certain punishment of crimes, as they are for the purposes of petty ambition and party views, then a real change would take place, and there would no longer be a plea for making a choice of evils, by taking the less evil instead of the greater; judges would no longer consider themselves as counsel for the prisoner, but hold an even balance between the accuser and the accused, for this maxim of being the prisoner's counsel must have arisen from an attempt to mitigate the unreasonable severity of the law; nor would jurors and witnesses prefer to commit parjury, and bring in verdicts contrary to their oaths, rather than convict: prosecutors would not so often hesitate to punish offenders from the fear, lest in seeking for satisfaction for the injury they have received, they should themselves commit a greater act of injustice by being accessary in depriving a fellow-creature of life, because their property has suffered a little by his depredations. Sir Samuel proves the inconveniences of this system of uncertainty.

"It is alleged by those who approve of the present practice, that the actions which fall under the cognizance of human laws are so varied by the circumstances which attend them, that if the punishment appointed by the law were invariably inflicted for the the same species of crime, it must be too severe for the offence, with the extenuating circumstances which in some instances attend it, and it must in others fall far short of the moral guilt of the crime, with its accompanying aggravations: that the only remedy for this, the only way in which it can be provided that the guilt and the punishment shall in all cases be commensurate, is to announce death as the appointed punishment, and to leave a wide discretion in the judge of relaxing that severity, and substituting a milder sentence in its place.

"If this be a just view of the subject, it would render the system more perfect, if in no case specific punishments were enacted, but it were always left to the judge, after the guilt of the criminal had been ascertained, to fix the punishment which he should suffer, from the severest allowed by our law, to the slightest penalty which it knows: and yet what Englishman would not be alarmed at the idea of living under a law which was thus uncertain and unknown, and of being continually exposed to the arbitrary severity of a magistrate?—All men would be shocked at a law which should declare that the offences of stealing in shops or dwelling-houses, or on board ships, property of the different values mentioned in the several statutes, should in general be punished with transportation, but that the king and his judges should have the power, under circumstances of great aggravation, respecting which

they should be the sole arbiters, to order that the offender should suffer death; yet such is in practice the law of England.

"In some respects however, it would be far better that this ample and awful discretion should be formally vested in the judges, than that the present practice should obtain; for it would then be executed under a degree of responsibility which does not now belong to it. If a man were found guilty of having pilfered in a dwelling-house, property worth forty shillings, or in a shop that which was of the value only of five shillings, with no one circumstance whatever of aggravation, what judge whom the constitution had intrusted with an absolute discretion, and had left answerable only to public opinion for the exercise of it, would venture for such a transgression to inflict the punishment of death: but if in such a case, the law having fixed the punishment, the judge merely suffers that law to take its course, and does not interpose to snatch the miserable victim from his fate, who has a right to complain? A discretion to fix the doom of every convict, expressly given to the judges, would in all cases be most anxiously and scrupulously exercised; but appoint the punishment by law, and give the judge the power of remitting it, the case immediately assumes a very different complexion.

"A man is convicted of one of those larcenies made capital by law, and is besides a person of very bad character. It is not to such a man that mercy is to be extended; and the sentence of the law denouncing death, a remission of it must be called by the name of mercy; the man therefore is hanged; but in truth it is not for his crime that he suffers death, but for the badness of his reputation. Another man is suspected of a murder of which there is not legal evidence to convict him; there is proof however, of his having committed a larceny to the amount of forty shillings in a dwelling-house, and of that he is convicted. He, too, is not thought a fit object of clemency, and he is hanged, not for the crime of which he has been convicted, but for that of which he is only suspected. A third, upon his trial for a capital larceny, attempts to establish his innocence by witnesses whom the jury disbelieve, and he is left for execution, because he has greatly enhanced his guilt by the subornation of perjured witnesses. In truth he suffers death, not for felony, but for subornation of perjury, although that be not the legal punishment of this offence.

"If so large a discretion as this can safely be intrusted to any magistrates, the legislature ought at least to lay down some general rules to direct or assist them in the exercise of it, that there might be, if not a perfect uniformity in the administration of justice, yet the same spirit always prevailing, and the same maxims always kept in view; and that the law, as it is executed, not being to be found in any written code, might at least be collected with some degree of certainty from an attentive observation of the actual execution of it. If this be not done, if every judge be left to follow the light of his own understanding, and to act upon the principles and the system which he has derived partly from his own observation, and his reading, and partly from his natural temper, and his early impressions, the law invariable only in theory, must in practice be continually shifting with the temper, and habits, and opinions of those by whom it is administered.

"In seeking to attain the same object they frequently do, and of necessity must, from the variety of opinions which must be found in different men, pursue very different courses. The same benevolence and humanity, understood in a more confined or a more enlarged sense, will determine one judge to pardon and another to punish. It has often happened, it necessarily must have happened, that the very same circumstance which is considered by one judge as matter of extenuation, is deemed by another a high aggravation of the crime. The former good character of the delinquent, his having come into a country in which he was a stranger to commit the offence, the frequency or the novelty of the crime, are all circumstances which have been upon some occasions considered by differ-

ent judges in those opposite lights: and it is not merely the particular circumstances attending the crime, it is the crime itself, which different judges sometimes consider in quite different points of view.

"Not a great many years ago, upon the Norfolk circuit, a larceny was committed by two men in a poultry-yard, but only one of them was apprehended; the other having escaped into a distant part of the country, had eluded all pursuit. At the next assizes the apprehended thief was tried and convicted; but Lord Loughborough, before whom he was tried, thinking the offence a very slight one, sentenced him only to a few months' imprisonment. The news of this sentence having reached the accomplice in his retreat, he immediately returned and surrendered himself to take his trial at the next assizes — The next assizes came; but unfortunately for the prisoner, it was a different judge who presided; and still more unfortunately Mr. Justice Gould, who happened to be the judge, though of a very mild and indulgent disposition, had observed or thought he had observed, that men who set out with stealing fowls, generally end by committing the most atrocious crimes; and building a sort of system upon this observation, had made it a rule to punish this offence with very great severity, and he accordingly, to the great astonishment of this unhappy man, sentenced him to be transported, while one was taking his departure for Botany Bay, the term of the other's imprisonment had expired; and what must have been the notions which that little public, who witnessed and compared these two examples, formed of our system of criminal jurisprudence?

"In this uncertain administration of justice, not only different judges act upon different principles, but the same judge, under the same circumstances, acts differently at different times. It has been observed, that in the exercise of this judicial discretion, judges soon after their promotion, are generally inclined to great lenity; and that their practical principles alter, or as it is commonly expressed, they become more severe, as they become more habituated to investigate the details of human misery, and human depravity.

"Let us only reflect how all these fluctuations of opinion and variations in practice must operate upon that portion of mankind, who are rendered obedient to the law only by the terror of punishment. After giving full weight to all the chances of complete impunity which they can suggest to their minds, they have besides to calculate upon the probabilities which there are after conviction, of their escaping a severe punishment; to speculate upon what judge will go the circuit, and upon the prospect of its being one of those who have been recently elevated to the bench. As it has been truly observed, that most men are apt to confide in their supposed good fortune, and to miscalculate as to the number of prizes which there are in the lottery of life, so are those dissolute and thoughtless men, whose evil dispositions penal laws are most necessary to repress, much too prone to deceive themselves in their speculations upon what I am afraid they accustom themselves to consider as the lottery of justice.

"Let it at the same time be remembered, that it is universally agreed, that the certainty of punishment is much more efficacious than any severity of example for the prevention of crimes. Indeed this is so evident, that if it were possible that punishment, as the consequence of guilt, could be reduced to an absolute certainty, a very slight penalty would be sufficient to prevent almost every species of crime, except those which arise from sudden gusts of ungovernable passion. If the restoration of the property stolen, and only a few weeks, or even a few days imprisonment, were the unavoidable consequence of theft, no theft would ever be committed. No man would steal what he was sure that he could not keep; no man would, by a voluntary act, deprive himself of his liberty, though but for a few days.— It is the desire of a supposed good which is the incentive to every crime: no crime therefore, could exist, if it were infallibly certain that not good, but evil must follow, as an unavoidable consequence to the person who

committed it. This absolute certainty, however, is unattainable, where facts are to be ascertained by human testimony, and questions are to be decided by human judgments. All that can be done is, by a vigilant police, by rational rules of evidence, by clear laws, and by punishments proportioned to the guilt of the offender, to approach as nearly to that certainty as human imperfection will admit."

Many pages are occupied in confuting the opinions of Dr. Paley on the subject of the criminal law.

We are pleased in seeing our author detect the sophisms of Dr. Paley, who with many amiable qualities was too much the advocate for things as they are, and endeavoured to reconcile us to present systems with all their defects. The criminal code, as well as the ecclesiastical establishment, found in him, notwithstanding their multiplied imperfections, a casuistical defender determined to make reasoning bend in favour of what is established. Sir Samuel, in his reply, exposes the inequality of the law, which punishes offences less enormous, while others of greater magnitude, and more hurtful in their consequences, are passed by, or very slightly punished, and adduces the following instances accompanied with much just reasoning.

"The terms, "enormous crimes," and "heinous aggravations," are of so vague and indefinite a nature, that it is not possible to ascertain with accuracy in what sense they are here used; but understanding them in their common and popular acceptation, to mean actions of great moral depravity, it is not easy to understand how the punishment of them is secured by the system which Dr. Paley defends.

"On the one hand, it is not at all evident how the stealing privately in a shop, or the stealing from bleaching grounds, or the stealing of sheep, can under any circumstances be considered as an enormous crime, or accompanied with heinous aggravations: and on the other it must be admitted, that sanguinary as our law is, numerous as are our capital offences, wide, to use Dr. Paley's own metaphor, wide as the penal net is spread, there are many acts of the greatest moral depravity for which neither the punishment of death, nor any other punishment of great severity is provided. A guardian who has defrauded his ward of the property with which he was intrusted for her benefit, and who has besides seduced her and turned her out upon the world a beggar and a prostitute; a man who being married, has concealed that fact, and having gained the affections of a virtuous woman, has persuaded her to become his wife, knowing at the same time that the truth cannot be long concealed, and that whenever disclosed it must plunge her into the deepest misery, and must have destroyed irretrievably all her prospects of happiness in life; has surely done that which better deserves the epithet of enormous crime, accompanied with heinous aggravation, than a butler who has stolen his master's wine. It is not a great many years ago since an attorney made it a practice, which for some time he carried on successfully, to steal men's estates by bringing ejectments, and getting some of his confederates to personate the proprietors, and let judgment go by default, or make an ineffectual defence; the consequence was that he was put into possession by legal process, and before another ejectment could be brought, or the judgment could be set aside, he had swept away the crops, and every thing that was valuable on the ground. If for this any punishment be provided by law, it is one far less severe than for the crime of petty larceny. That any of the actions which I have mentioned, merit the punishment of death, I certainly do not affirm. I have no criterion and the learned author has furnished me with none by which to determine how death is deserved;—but I am sure that stealing a few yards of ribbon or of lace in a shop, is an offence far below them in the scale of moral guilt.

"Admitting that the stealing of a sheep or a horse, may, under some possible circumstances, merit the punishment of death, how are we to comprehend that there are no possible circumstances that imagination can suggest, which would make the stealing

of a hog or an ox deserving of the same fate? It must too, greatly astonish one, that any person who had possessed himself of the catalogue of capital offences to be found in our law, long as it is, and who had reflected upon the actions which take place even in the ordinary intercourse of mankind, could ever have affirmed, that there was no act of gross immorality, or highly injurious to society, which might not by the present existing law of England be punished with death, or which in the language of this writer, is not swept into the net. There is nothing surely in this sentence that any one can approve, unless it be the happy choice of the metaphor. None indeed could have been found, which could have more forcibly described the situation of a man, who taking his notion of law from what he sees executed, and therefore thinking that the offence which he had committed could only subject him to imprisonment or transportation, finds to his surprise that he has forfeited his life. I remember hearing a person who had been present at a trial, describe the astonishment which was expressed in the language, and painted in the countenance of a wretch who was convicted of stealing his master's wine, at finding that the sentence pronounced upon him was that of death, or, to use the language of Paley, at finding himself inextricably entangled in the fatal net. Fatal indeed it was to him, for the judge left him for execution.

"In what indeed consists the difficulty of marking out in general laws, the peculiar aggravations of crime which ought to be attended with aggravation of punishment, Dr. Paley has left altogether unexplained; and indeed a little farther on,* as if to convince his readers that there is really no difficulty in the case, he himself enumerates the several "aggravations which ought to guide the magistrate in the selection of objects of condign punishment." "These," he says, "are principally three, repetition, cruelty, and combination;" "in crimes," he adds, which are perpetrated by a multitude or by a gang; it is proper to separate in the punishment, the ringleader from his followers, the principal from his accomplices, and even the person who struck the blow, broke the lock, or first entered the house, from those who joined him in the felony." Every one of the aggravations here enumerated, is undoubtedly as capable of being clearly and accurately described, in written laws, and as proper to be submitted to the decision of a jury, as the crimes themselves.

"The reason, indeed, which Dr. Paley gives for considering the circumstances which he last mentions as aggravations which ought to determine the fate of convicts, shows in the strongest possible light the necessity of their being stated in written laws. "It is not," he says, "so much on account of any distinction in the guilt of the offenders, as for the sake of casting an obstacle in the way of such confederacies, by rendering it difficult for the confederates to settle who shall begin the attack, or to find a man amongst the number willing to expose himself to greater danger than his associates." Now for this selection of offenders for severer punishment to produce the effects which are here pointed out, as its objects, it is indispensably necessary, not only that the selection should be constantly and invariably governed by the aggravations here enumerated, but that this should be made known to the public, and such a constant, invariable, and notorious practice can be secured by no other means than by laying it down as a certain and inflexible rule in a public law. That all, or that even a majority of the judges, exercise the tremendous discretion with which they are invested, upon the principles here stated by Dr. Paley, I am sure no one will pretend. That any one of them has adopted these principles is what I have never heard, and yet it is only by the principles being known, that the practice can effectuate its end.

"By this expedient," he proceeds, "few actually suffer death, whilst the dread and danger of it hang over the crimes of many." The *chance* of it, he should rather have said,

* Page 288.

hangs over the crimes of many. For the dread of punishment to prevent crimes, punishment must as nearly as can be effected, be the certain consequence of committing them.—Whereas all that is done by the administration of penal justice, in that method which Dr. Paley declares to be the best, is to make the punishment of death the possible, but by no means the probable consequence of the crime.—The dread that the offender may have the ill fortune to be the one who suffers, and not among the nine convicted offenders who escape, will undoubtedly have some, but it will be but a feeble influence, towards the prevention of offences.

"To subject by law ten men to the punishment of death, because one of them has, in opinion of the legislature, deserved it, or to speak more properly, has done that which makes it necessary to the public safety that his life should be sacrificed, and then "trust to the benignity" of the magistrate to discover the nine, against whom it was "never meant that the law should be carried into execution;" to have no better security for the proper execution of this most important office, than the benignity of the magistrate, and to afford him no light to guide him in the exercise of that benignity, is after all a very cruel conduct in those who are the makers of the law. The severity of our statutes is, it seems, to be relaxed, whenever those circumstances of aggravation are wanting which render so rigorous an interposition necessary; and yet the legislature is totally silent as to those aggravations. It omits any mention of the circumstances, without which its law is not to have the force of law. The legislature means that death shall be inflicted only in a given case, and it carefully avoids saying what that case is. While it openly denounces death for a certain crime, it really means that death shall be inflicted only if the guilt of some additional crime is added to it, and instead of particularizing that additional guilt, it leaves it to those who are to execute the law first to imagine what the legislature meant, and then to discover those undescribed circumstances in each particular case."

On the subject of pardon, we have the following judicious remarks.

"Those who to every attempt at improvement are accustomed to oppose a panegyric on our law and constitution, frequently adopt a course which is very convenient for their purpose. As theory and practice are often upon these subjects very dissimilar, and are sometimes in direct opposition to each other, they select for the topic of their encomium whichever they can represent in the most favourable light; and of this we have here a very remarkable instance. In every thing which Dr. Paley has hitherto said, it is the established practice, a practice which alters and almost supersedes the written law, which he has been vindicating: but now he suddenly takes an opposite course, and holds up to our admiration a part of the constitution which exists in theory, but is almost abrogated in practice. In every county of England but Middlesex, and in every part of Wales, this privilege of suspending the laws, high as it is, is exercised, not by the chief magistrate, but by subordinate officers in the state, and without the assistance of that best advice which the king can collect. It is true, that they exercise this privilege in the name of the king, in whose name too they administer the law; and if this fiction is to be resorted to, it may be said with as much truth, that the king decides causes, and tries prisoners, as that he exercises his power of suspending the laws.

"But let this power be deposited where it will," adds Dr. Paley, "the exercise of it ought to be regarded as a judicial act; as a deliberation to be conducted with the same character of impartiality, with the same exact and diligent attention to the proper merits and circumstances of the case, as that which the judge upon the bench was expected to maintain and show in the trial of the prisoner's guilt. The questions, whether the prisoner be guilty, or whether being guilty, he ought to be executed, are equally questions of public justice. The adjudication of the latter question is as much a

function of magistracy as the trial of the former. The public welfare is interested in both. The conviction of an offender should depend upon nothing but the proof of his guilt; nor the execution of the sentence upon any thing besides the quality and circumstances of his crime." Nothing can show in a stronger point of view the defects of the system which Dr. Paley defends, than this single passage. He here imposes upon the judges, duties which it is impossible for them to discharge. If indeed, he had contented himself with saying, that this suspension of the law ought never to be a favour "yielded to solicitation, or granted to friendship, or made subservient to the conciliating or gratifying of political attachments," no person could have disputed his doctrine, though many might have wondered that he had thought it worth while to state what was so obvious; but when he goes on to say, that it must be considered as a judicial act, or as the adjudication of a question of public justice, he really deals with the judges no less hardly than the Egyptian tyrant did with the children of Israel, when he commanded them to make bricks, but withheld from them the materials with which they were to be made. A judicial act is the application of an existing law to facts which have been judicially proved: but where is the law of which the judge, in the exercise of this power, is to make the application? Or how can it be said that there has been judicial proof of facts, for which the criminal has never been put upon his trial, which have never been submitted to a jury, and upon which, consequently, a jury has come to no decision?

"Of all the duties, indeed, which a judge has to discharge, the exercise of this discretion must be the most painful. It is true that there are no duties, however awful, no situation, however difficult, with which long habit will not render the best of men familiar; but if we represent to ourselves a judge newly raised to that eminence, just entering upon the circuit, and become for the first time the arbiter of the lives of his fellow-creatures, we shall be able to form to ourselves some idea of the difficulties he has to encounter, and of the anxiety which he must necessarily feel. Sworn to administer the law, he is at the same time the depositary of that royal clemency which is to interrupt its execution. In danger of obstructing the due course of justice on the one hand, or refusing mercy to those who have a fair claim to it on the other, he finds no rules laid down, or principles established by the legislature, to guide his judgment. He must fix for himself the principles and the rules by which he is to act, at the same time that he is to apply them and bring them into action, and yet he cannot but be aware, that the principles which he shall adopt will probably not be those of his successor, who will have maxims of justice and of mercy of his own, but which cannot possibly be foreseen; and at the same time he must know that it is nothing but a uniformity of practice which can make the exercise either of severity or of lenity useful to the public. In such a state of embarrassment, it is, that he is called upon to decide, and upon his decision the life of an individual depends; nay, upon the decision of a single case may depend the lives of many individuals. The clemency he shows, though it spares the life of a single convict, may be the means of alluring others to the commission of the same crime, who from other judges will not meet with the same lenity. The execution of a severe judgment may be the means of procuring impunity to many other criminals, by inducing prosecutors to shrink from their duty, and jurymen to violate their oaths.

"From the foregoing observations it should seem, that the laws, which it is proposed to repeal, cannot well be defended as part of a general system of criminal jurisprudence.—Taken by themselves, it seems still more difficult to justify them. They are of such inordinate severity, that as laws now to be executed, no person would speak in their defence.

"It is sufficient, however, to say of those laws, that they are not, and that it is impossible that they should

be executed; and that instead of preventing, they have multiplied crimes, the very crimes they were intended to repress, and others no less alarming to society, perjury, and the obstructing the administration of justice.

"But although these laws are not executed, and may be said, therefore to exist only in theory, they are attended with many most serious practical consequences. Amongst these, it is not the least important, that they form a kind of standard of cruelty, to justify every harsh and excessive exercise of authority. Upon all such occasions these unexecuted laws are appealed to as if they were in daily execution. Complain of the very severe punishments which prevail in the army and navy, and you are told that the offences, which are so chastised, would by the municipal law be punished with death. When not long since a governor of one of the West India islands was accused of having ordered that a young woman should be tortured, his counsel said in his defence, that the woman had been guilty of a theft, and that by the laws of this country her life would have been forfeited. When in the framing new laws, it is proposed to appoint for a very slight transgression, a very severe punishment, the argument always urged in support of it is, that actions, not much more criminal, are by the already existing law punished with death. So in the exercise of that large discretion which is left to the judges, the state of the law affords a justification for severities, which could not otherwise be justified. When for an offence, which is very low in the scale of moral turpitude, the punishment of transportation for life is inflicted, a man who only compared the crime with the punishment, would be struck with its extraordinary severity; but he finds, upon inquiry, that all that mass of human suffering which is comprised in the sentence, passes by the names of tenderness and mercy, because death is affixed to the crime, by a law scarcely ever executed, and as some persons imagine, never intended to be executed.

"For the honour of our national character; for the prevention of crimes; for the maintenance of that respect which is due to the laws, and to the administration of justice; and for the sake of preserving the sanctity of oaths; it is highly expedient that these statutes should be repealed."

The difficulties in which jurors are sometimes involved, and the inconsistencies, which they adopt, rather than find guilty of death for small offences, while in fact they exemplify the struggles of conscience between pressing deviations from rectitude on either hand, are thus set forth at the conclusion of this pamphlet.

"The latitude which juries allow themselves in estimating the value of property stolen, with a view to the punishment which is to be the consequence of their verdict, is an evil of very great magnitude. Nothing can be more pernicious than that jury men should think lightly of the important duties they are called upon to discharge, or should acquire a habit of trifling with the solemn oaths they take. And yet, ever since the passing of the acts which punish with death the stealing in shops or houses, or on board ships, property of the different values which are there mentioned, juries have, from motives of humanity, been in the habit of frequently finding by their verdicts, that the things stolen were worth much less than was clearly proved to be their value. It is held, indeed by some of the judges (whether by all of them, and upon all occasions, I am not certain) that juries in favour of life may fairly in fixing the value of the property, take into their consideration the depreciation of money which has taken place since the statutes passed, or in the words of Mr. Justice Blackstone, "may reduce the present nominal value of money to its ancient standard."* To show, therefore, to what an extent juries have assumed to themselves a power of dispensing with the law in this respect, it will be proper to refer to the earliest trials, for these offences, that I happen to have met with.

"In the year 1731-2, which was only thirty-two years after the act of King

* Com. vol. iv. p. 239.

William, and only sixteen after the act of Queen Ann, a period during which there had scarcely been any sensible diminution in the value of money, it appears from the sessions papers, that, of thirty three persons indicted at the Old Bailey for stealing privately in shops, warehouses, or stables, goods to the value of five shillings and upwards, only one was convicted, twelve were acquitted, and twenty were found guilty of the theft, but the things stolen were found to be worth less than five shillings. Of fifty-two persons tried in the same year at the Old Bailey, for stealing in dwelling-houses, money, or other property of the value of forty shillings, only six were convicted, twenty-three were acquitted, and twenty-three were convicted of the larceny, but saved from a capital punishment by the jury stating the stolen property to be of less value than forty shillings. In the following years the numbers do not differ very materially from those in the year 1731.

"Some of the cases which occurred about this time are of such a kind, that it is difficult to imagine by what casuistry the jury could have been reconciled to their verdict It may be proper to mention a few of them; Elizabeth Hobbs was tried in September 1732, for stealing in a dwelling-house one broad piece, two guineas, two half-guineas, and forty-four shillings in money. She confessed the fact, and the jury found her guilty, but found that the money stolen was worth only thirty-nine shillings. Mary Bradley, in May 1732, was indicted for stealing in a dwelling-house, lace which she had offered to sell for twelve guineas, and for which she had refused to take eight guineas; the jury, however, who found her guilty, found the lace to be worth no more than thirty-nine shillings. William Sherrington, in October 1732, was indicted for stealing privately in a shop, goods which he had actually sold for £1 5s. and the jury found that they were worth only 4s. 10d.

"In the case of Michael Allom, indicted in February 1733, for privately stealing in a shop, forty-three dozen pairs of stockings, value £3 10s. It was proved that the prisoner had sold them for a guinea and a half, to a witness who was produced on the trial, and yet the jury found him guilty of stealing what was only of the value of 4s. 10d. In another case, that of George Dawson and Joseph Hitch, also indicted in February 1733, it appeared that the two prisoners, in company together at the same time, stole the same goods privately in a shop, and the jury found one guilty to the amount of 4s. 10d. and the other to the amount of 5s. that is, that the same goods were at one and the same moment of different values. This monstrous proceeding is accounted for by finding that Dawson who was capitally convicted, had been tried before at the same sessions for a similar offence, and had been convicted of stealing to the amount only of 4s. 10d. The jury seem to have thought, that having had the benefit of their indulgence once, he was not entitled to it a second time, or in other words, that having once had a pardon at their hands, he had no further claims upon their mercy."

In this critique we have, as in former instances, preferred to give an abridgement of the author's train of reasoning on highly important subjects, putting our readers in possession of the substance of the book, and leaving them to their own conclusions. In the present instance Sir Samuel Romilly is entitled to the praise of using strenuous and enlightened exertions in the cause of humanity; on the one hand he is not inclined to support the cause of justice on angry and vindictive principles, nor on the other he is not seduced by a counterfeit philanthropy, to injure the innocent by letting the guilty escape, for into this error some well-meaning people have at times fallen; but his comprehensive views are directed to a liberal review of our system of jurisprudence, and to the laudable attempt to induce the legislature to proportion more accurately the punishment to the enormity of the offence committed. We most heartily wish success to his endeavours, which we trust will be ultimately crowned with success. The dread of innovation, and his present unpopularity in the

House on account of his honest defence of John Gale Jones, as some of the members threatened, has prevented his carrying the measure at present to the extent he wishes, but sooner or later we confidently trust justice and enlightened policy will prevail. The abolition of the slave trade, after years of patient and persevering struggle affords encouragement not to despair.

Before we dismiss the subject we have one important observation to make; that, laudable and praiseworthy as the attempt is to reform our criminal code, by lessening the number of capital offences, another reform is essentially necessary to be connected with it, to give it efficacy, and to lessen the number of crimes. We allude to a reform in the management of our jails, and a system of employing convicts in hard labour; at present the idleness of a prison corrupts its inmates. Convicts should be forced to work, and then one of the principal inducements to commit crimes would be removed, when it is found that transgressing the law leads to hard labour, coupled with a judicious mixture of solitary confinement. In another part of this Magazine will be found an account of the Philadelphia prison, in which this system has been successfully tried. To render such a plan efficacious, much disinterested exertion would be wanted in those who would on principles of pure philanthropy undertake the superintendence of prisons, as inspectors, and doubts may be entertained, whether in this selfish and apathetic age, the plan would not fail for want of vigilant superintendants: yet we would heartily wish to see the attempt made, and we trust that there is yet as much virtue left, as would in some places insure support, while the example of a few might stimulate others. If the energies of governments, and the efforts of individuals were directed to the amelioration instead of the destruction of mankind, a new era of happiness would commence and peace and civilization would supplant the aggressions of private life, and the calamities of public warfare.

K.

BIOGRAPHICAL SKETCHES OF DISTINGUISHED PERSONS.

BIOGRAPHICAL SKETCH OF MADAME ROLAND.

Continued from p.283, No. XXI.

"Tyrants! in vain ye trace the wizard ring;
In vain ye limit mind's unwearied spring,
What, can ye lull the winged winds asleep,
Arrest the rolling world, or chain the deep?
No—the wild wave condemns your sceptre'd hand;
It roll'd not back when Canute gave command!
Man! can thy doom no brighter soul allow?
Still must thou live a blot on Nature's brow?
Shall war's polluted banner ne'er be furl'd?
Shall *crimes* and *tyrants* cease but with the world?
What, are thy triumphs, sacred Truth belied?
Why then hath Plato liv'd or Sydney died?
Yes, in that generous cause for ever strong,
The patriot's virtue, and the poet's song,
Still as the tide of ages rolls away,
Shall charm the world, unconscious of decay."

CAMPBELL'S PLEASURES OF HOPE.

RISING about noon the next day, Madame Roland, busied herself in arranging her apartment. She had in her pocket Thomson's Seasons, a work of which she was peculiarly fond. While she was employed in these peaceful preparations, she heard the town in a tumult, and the drums beating to arms. She could not help smiling at the contrast. "At any rate," said she to herself, "they will